PETITIONER:
ASHOK SOAP FACTORY AND ANR.

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI AND ORS.

DATE OF JUDGMENT12/01/1993

BENCH:
YOGESHWAR DAYAL (J)
BENCH:
YOGESHWAR DAYAL (J)
VERMA, JAGDISH SARAN (J)
VENKATACHALA N. (J)

CITATION:
1993 SCR (1) 124 1993 SCC (2) 37
JT 1993 (1) 128 1993 SCALE (1)98

ACT:
Delhi Municipal Corporation Act, 1957:
Section 283--Levy of charges for supply of electricity--Minimum consumption guarantee charges for 'large industrial powers' consumers--Increase in rate in respect of Arc/induction furnaces--Validity of.
Electricity Act, 1910:
Section 21--Applicability to local authorities--Delhi Municipal Corporation, being a licensee by virtue of provisions of the Delhi Municipal Corporation Act, and not one licensed under Part II to supply energy, Section not applicable.
Section 22, proviso--Proviso does not deal with the minimum consumption charges.
Constitution of India, 1950:
Article 14--Price fixation--Fixation of tariff, a legislative function--Hence, fixation of higher rate not open to challenge on ground of non-disclosure of reasons in the absence of any unreasonableness or arbitrariness--Since arc/induction furnaces constitute a class by themselves, question of discrimination does not arise.

HEADNOTE:
Section 283 of the Delhi Municipal Corporation Act, 1957 empowered respondent No.1 Delhi Municipal Corporation to levy charges for the supply of electricity on such rates as may be fixed from time to time by it. For the purpose of charging the consumers, the Corporation had divided the consumers into different categories/classes providing for different tariffs for each category. One of the categories was 'large industrial powers' (LIP) consumers. The consumers who had a sanctioned load of 100 KWs fell in the category of large industrial powers.
125
For the levy of charges for the supply of electricity there were two systems of tariff, namely, the flat rate system and the other two-part tariff system. Under the former a flat rate was charged on the units of energy consumed while the latter system was meant for big consumers of electricity i.e. industrial power, and it was comprised of two charges (1) minimum consumption guarantee charges (called demand

charges) and (2) energy charges for the actual amount of energy consumed.
Under the two-part system an LIP consumer would pay minimum guarantee consumption charges at the rate fixed by the respondents. If the LIP consumer did not consume the specified minimum quantity of electricity or no energy at all even then he had to pay the minimum guarantee charges. But in case the consumer consumed more electricity then what was prescribed by the minimum guarantee charges, then the consumer paid the minimum guarantee charges and also paid the electricity charges for the actual consumption of electricity, beyond the minimum guarantee charges, in such a manner that the minimum guarantee charges were merged in the total bill of electricity consumed and a rebate was given to the consumer. In other words, if a consumer consumed more than the specified minimum quantity of electricity then, in effect, he would pay for electricity which was actually consumed by him.
For the period from 1985-86 to 1988-89, the respondents had fixed rates of minimum consumption guarantee charges at the rate of Rs. 40 per KVA for 1000 KVA and Rs38 per KVA above 1000 KVA. However, pursuant to a Resolution passed by the respondent Corporation approving the resolution passed by the D.E.S.C., there was an upward revision of rates of minimum consumption guarantee charges in respect of arc/induction furnaces.
As a result, for demand charges for the first 1000 K-VA of billing demand for the month, instead of tariff being Rs. 40 per or part thereof, it was enhanced to Rs. 340 per KVA- or part thereof.
The appellants had set up/installed arc/induction furnaces for the manufacture of castings in their factories. Electricity was one of the important raw materials for the appellants and had obtained electricity from the respondents. The sanctioned load was more than 100 KWS and, therefore, they fell into the LIP category and the two-part tariff was applicable to them. 'The appellants filed writ petitions before the High
126
Court challenging the enhancement of the minimum guarantee charges.
It was contended that the provisions of Section 21 of the Indian Electricity Act, 1910 applied and the decision to increase minimum charges was contrary to Section 21(2) of the Act, that changing the rates at which minimum charges were to be realised amounted to altering or amending the conditions of supply and this could not be done without the previous sanction of the State Government, and therefore, the proposed increase was in violation of Section 21(2) of the 1910 Act, that the minimum guarantee charges could only be levied under the proviso to Section 22 of the 1910 Act, that under the proviso to Section 22 the licensee could only charge that amount which would give it a reasonable return on the capital expenditure and cover standing charges incurred by it in order to meet the possible maximum demand, that the respondents had to satisfy the Court that the minimum demand charges had been raised to Rs. 340 from Rs. 40 and that the additional capital expenditure had been incurred, which would justify Rs. 340 being charged as a reasonable return on the said capital expenditure, and that the tariff vis-a-vis a consumer owning are furnaces was violative of Article 14 of the Constitution inasmuch as the other bulk consumers in the category of LIP consumers had not been so treated.
The High Court dismissed the writ petitions holding that in

case the local authority was the licensee, no prior approval of the State Government was required in law for changing the rates, and that apart from proviso to Section 22, the agreement between the parties justified the claim of the respondent- Corporation for minimum consumption guarantee charges.

Dismissing the appeals preferred by the consumers-appellants, this Court

HELD:1.1. Section 21(2) of the Act was applicable to the licensees other than the local authorities. 'Licensee' as defined in the 1910 Act in Section 2(h) means any person licensed under Part 11 to supply energy'. The D.M.C., which is the licensee in the present case is not a licensee licensed under Part 11 to supply energy. D.M.C. is licensee by virtue of the provisions contained in the Delhi Municipal Corporation Act, 1957. [136G-H, 137A]

1.2.The proviso to Section 22, talks about a separate supply unless

127

he had agreed with the licensee to pay him such minimum annual sum'. In the present case, there is no question of any separate supply or any agreement in relation to minimum annual sum. Section 22 deals with totally different situation and has nothing to do with the minimum consumption guarantee charges provided as part of the tariff which in turn was part of the agreement between the parties. [137E-F]

1.3.The reasons for the revision of minimum consumption charges, in respect of arc/induction furnaces, were that in many instances it was noticed that the meters where bulk supply was made were found to be defective and the consumption recorded was found to be extremely low causing loss of huge revenue. The arc/induction furnaces normally run continuously and, therefore, the D.E.S.C. was justified to increase the rate of minimum consumption guarantee charges. The variation in the electricity consumed by different consumers indicated that the charge of pilferage of electricity and gross under-utilisation or consumption of electricity compared to the sanctioned load was not without foundation. The tabulated statement of the consumers using induction furnaces placed on record by the respondents deals with 52 consumers including most of the appellants. This statement shows large variation of the electricity consumed. It is surprising that the units are still surviving by working for a short period. On the assumption that the electricity consumed is as per the sanctioned load, the approximate number of hours for which the induction furnaces have been worked in a month has been stated in the said statement. There was thus a reasonable basis to assume theft by substantial number of arc/induction furnaces consumers. The consumer contracts for a minimum supply of electricity of certain dimensions and the D.M.C. which is licensee in the present case, has to buy energy by way of bulk supply from outside sources and has to keep it readily available for the consumer for the whole year round. Surely the consumer, who contracts for such high quantity of energy, does so because of its need and not for keeping it as stand by, without paying for, it. No licensee can possibly keep such enormous quantity of electricity in reserve for a consumer, month after month, without its consumption. That is why in the tariff, which was part of the agreement, for LIP consumers there was two part tariff system partly minimum consumption guarantee charges and partly for actual energy consumed. [138F-H, 139A-B-D]

1.4.It was also stipulated that the minimum consumption guarantee

128
charges would not be payable if a consumer utilises or consumes 60% of the sanctioned load. The rate per unit had not been changed. It was only the minimum guarantee charges which has been revised. If a consumer consumes more than 60% of the sanctioned load, then he is not adversely affected by the revision of the minimum demand charges from Rs. 40 per KVA per month to Rs. 340 per KVA per month. It is difficult to appreciate or understand how the manufacturers using arc/induction furnaces could have such variation in the consumption of electricity, as indicated in the tabulated statement, except to suggest that there was large scale pilferage of electricity. It is not easy to accept that induction furnaces having sanctioned loads of more than 1000 KW consuming electricity, if converted into approximate number of hours worked in a month at the maximum load, being as little as 18.1 hours especially when there were instances of other induction furnaces consuming far more number of units per month. The respondents had to keep in readiness the supply of energy as per the sanctioned load of various consumers and were incurring expenditure for the generation, supply or purchase of the same. When the consumers were not paying for it, the respondents obviously had no option but to revise the minimum demand charges so as to cover up and make good the generating and supply costs. [139E-H, 140A]
1.5.In the present case, the respondents themselves have placed figures to demonstrate the formula on the basis of which the rate of Rs. 340 per KVA has been fixed. Ile formula shows that if 60% of the load sanctioned is utillsed then there is no unreasonableness or excessiveness in the tariff. [140D]
1.6.The recommendations of the D.E.S.C. were justified on facts and were rightly accepted by the D.M.C. in raising the minimum consumption guarantee charges to Rs. 340 per K-VA per month for the first 1000 K-VA which are neither unreasonable nor arbitrary. [140F]
1.7.The tariff was fixed by D.E.S.C. with the approval of the D.M.C. in view of the power conferred under Section 283 of the Corporation Act [140H,141A]
2.1.The fixation of tariff is a legislative function and the only challenge to the fixation of such levy can be on the ground of unreasonableness or arbitrariness and not on demonstrative grounds in the sense that the reasons for the levy of charge must be disclosed in the order
129
imposing the levy or disclosed to the court, so long as it is based on objective criteria. [140B]
2.2.As bulk consumers belonging to LIP category, the consumers of arc/induction furnaces are a class by themselves and, in any case, the revision is as per the agreement between the licensee and the consumers which is neither unreasonable nor arbitrary and therefore, there Is no discrimination. All the appellants had entered into agreements with the respondent-Corporation and clause 15(a) thereof provided that the consumer shall be liable to pay for whatever surcharge or increase in these rates as may from time to time be levied or made by the Undertaking. Any other method of charging decided by the Undertaking shall also be applicable. [140G, 134G, 135B]

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1478 of

1990.
From the Judgment and Order dated 1.3.90 of the Delhi High Court in Civil Writ Petition No. 1744 of 1989.
WITH
CA. Nos. 1474-1476, 1473, 1479-1483, 1477, 1484-1511, 1518, 1543 of 1990 and 4206 of 1991.
R.K Jain, Harish N. Salve, P.P. Tripathi, Tripurari Ray, Mukul Mudgal Vineet Kumar, Ms. Kamini Jaiswal, Ashok Mathur and Ranjit Kumar for the appearing parties.
The Judgment of the Court was delivered by
YOGESHWAR DAYAL, J. These are batch of appeals against the judgment of Delhi High Court dated 1st March, 1990 whereby the High Court by a common judgment disposed of a bunch of writ petitions, inter alia, filed by Gulab Rai against the Municipal Corporation of Delhi and others.
The challenge in the writ petitions was to the Resolution of the Municipal Corporation of Delhi (hereinafter referred to as M.C.D.) whereby it approved the proposal of the Delhi Electricity Supply Committee (in short D.E.S.C.) to enhance minimum consumption guarantee charges from Rs. 40 per KVA to Rs. 340 per KVA in respect of arc/induction
130
furnaces.
The petitioners in the writ petitions had set up/installed arc/induction furnaces for the manufacture of castings and have their factories in Delhi.
One of the important raw-materials for the writ petitioners is electricity. Each of the petitioners had obtained electricity from the respondents and the sanctioned load is more than 100 KWS. The exact sanctioned load, among the various writ petitioners, varies, depending upon the size and capacity of the furnaces set up by them but each one of them has a sanctioned load of more than 100 KWS.
The case of the petitioners before the High Court was that Section 283 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as 'the Corporation Act') empowers respondent No.1 (D.M.C.) to levy charges for the supply of electricity on such rates as may be fixed from time to time by the D.M.C. in accordance with law. For the purpose of charging the consumer, the D.M.C. has divided the consumers in different categories/classes providing for different tariffs for each category. One of the categories is 'large industrial power' (LIP) consumers. The consumers who have a sanctioned load of 100 KWS fall in the category of large industrial powers. The writ petitioners fall under this category as each one of them has a sanctioned load of more than 100 KWS. For the levy of charges for the supply of electricity there are two systems of tariff which are followed, namely the flat rate system and the other two-part tariff system. Under the former, a flat rate is charged on the units of energy consumed while the latter system is meant for big consumers of electricity i.e. industrial power, and it is comprised of two charges (1) minimum consumption guarantee charges (called demand charges) and (2) energy charges for the actual amount of energy consumed.
It was the case of the petitioners that two-part tariff system was applicable to them. Under this system an LIP consumer pays minimum guarantee consumption charges at the rate fixed by the respondents. If the LIP consumer does not consume the specified minimum quantity of electricity or no energy at all even then he has to pay the minimum guarantee charges. But in case the consumer consumes more electricity that what is prescribed by the minimum guarantee charges then the consumer pays the minimum guarantee charges and

also pays the electricity charges for the actual consumption of electricity beyond the minimum

131

guarantee charges, in such a manner that the minimum guarantee charges are merged in the total bill of electricity consumed and a rebate is given to the consumer. In other words, if a consumer consumes more than the specified minimum quantity of electricity then, in effect, he win pay for electricity which is actually consumed by him.

For the period from 1985-86 to 1988-89 the respondents had fixed rates of minimum consumption guarantee charges at the rate of Rs. 40 per KVA for 1000 KVA and Rs. 38/per KVA above 1000 KVA. The tariff for the LIP consumers in respect of the aforesaid period, including the minimum guarantee charges, as fixed by the respondents was as follows

(d) Tariff

Demand charges

First 1000 KVA of billing demand for the month

Rs. 40.00 per KVA or part thereof.

All above 1000 KVA of billing demand for the month.

Rs. 38.00 per KVA or part thereof.

First 5,00,000 units per month at 15 paise per unit.

All above 5,00,000 units per month at 84 paise per unit.

Subject to:

a maximum overall rate of Rs. 1.10 per KVA without prejudice to the minimum payment as laid down in item (g) below and adjustment clause at (xvii) above under General Conditions of applications.

Item (g) of the said tariff prescribes that the minimum bill would be the amount of the demand charges based upon the KVA of billing demand. Item (g) reads as under:-

"(g) Minimum Bill

The amount of the demand charges based upon the KVA of billing demand.'

132

The billing as per the aforesaid tariff had been explained by the petitioners before the High Court with the following illustration

'(a) If a consumer with a sanctioned load of 1000 KVA does not consume any energy in a given month, he would be liable to pay the minimum guarantee charge of Rs. 40,000 i.e. 1000 KVA (sanctioned load/contracts demand) x 40 (minimum guarantee charge) = Rs. 40,000

Even if he consumes electricity, but the value of the units actually consumed by him works out to less than Rs. 40,000 which is the minimum consumption guarantee charges, even then he will have to pay the minimum consumption guarantee charges of Rs. 40,000.

(b)In the event one consumer consumes energy of the value of more than Rs. 40,000, then the billing would be done in the following manner :-

Assuming that the consumer consumes 80,000 units of electricity :-

1000 KVA (sanctioned load)= Rs. 40,000
X 40 (rate of minimum
guarantee charges).
80,000 (units consumed)
0.85 paise (energy charge)= Rs. 68,000 per unit.

---

TotalRs. 1,08,000

---

In terms of the tariff, the maximum charge cannot be more than the over all rate of Rs. 1.10 per unit consumed. Therefore, 80,000 units consumed would be chargeable at the

maximum rate of Rs. 1.10 per unit which works out to Rs. 88,000. Since the amount of Rs. 1,08,000 is higher than Rs. 88,000 i.e. by Rs. 20,000 a rebate of Rs. 20,000 would be given to the consumer and the consumer would be billed only for Rs. 88,000.

It would be thus evident from the above illustration that the consumer, in any event, has to pay the minimum guarantee

133

charge even if the value/price of the energy actually consumed is more than the minimum consumption guarantee charges, the amount of the minimum consumption guarantee gets merged into/with the energy charges."

It was then submitted on behalf of the writ petitioners that the General Manager of respondent No.2 wrote a letter dated 24th January, 1989 to DE.S.C. inter alia, proposing revision of rates of minimum consumption guarantee charges in respect of arc/ induction furnaces. In this letter the General Manager gave the figures of the fixed expenditure per KW per month. It was stated that the rates of minimum consumption guarantee were fixed in 1985 and the increase in fixed expenditure per KW per month necessitated the revision of rates of minimum consumption guarantee charges. It was also mentioned that the transmission and distribution losses were quite high and they fell into two categories, namely, technical losses and commercial losses. The cause for commercial losses was explained by the General Manager in the following words :-

"The Commercial losses are also attributed to pilferage/ fraudulent abstraction of energy etc. The minimum consumption guarantee being quite low also attributes to the tendency of fraudulent abstraction of energy. After giving a serious thought to reduce the pilferage/fraudulent abstraction of energy, it has been felt desirable to revise the rate of minimum consumption guarantee to a reasonable level so that consumers are not attracted for such unfair means and the rates are commensurate with the fixed expenditure being measured by the undertaking."

In the proposal contained in this letter, there was no suggestion for increase of minimum consumption charge for domestic category but for other categories increase was recommended and in respect of aec/induction furnaces the increase for minimum consumption guarantee charge was to be Rs. 340 instead of Rs. 40 per KVA.

This proposal contained in the letter dated 24th January, 1989 was discussed by the D.E.S.C. in its metting held on 9th March, 1989 and the case was referred back to the General Manager to inform the D.E.S.C. whether the respondent was recovering its dues from the bulk supply consumers based on their actual consumption. Pursuant thereto, the

134

General Manager wrote another letter dated 23rd March, 1989 to D.E.S.C. and inter alia, stated that the billing is normally done on the basis of consumption recorded in the meters but in many instances it has been noticed that meters were found to be defective. The consumption recorded was found to be much less than the consumption which was recorded in the previous year and when compared to the connected load, the consumption was found to be extremely less in many cases causing loss of huge amount to the Undertaking. It was also stated in this letter that for the

aforesaid reason "the proposal was put up to D.E.S.C. for levy of higher minimum consumption charges in the case of arc/induction furnaces on basis of their load. It is worth mentioning that these furnaces normally run continuously and, therefore, levy of minimum charges is considered justified."

The aforesaid proposal of the General Manager was accepted by D.E.S.C. by Resolution dated 30th March, 1989 and it recommended to the D.M.C. that the proposed revised rates of minimum consumption guarantee charges be approved only in respect of plastic and arc/induction furnaces in their respective categories.

Pursuant to the aforesaid Resolution of the D.E.S.C., the D.M.C. also vide its Resolution dated 1st May, 1989 approved the enhancement of the minimum consumption guarantee charges only in respect of arc/induction furnaces to Rs. 340 per KVA or part thereof instead of Rs. 40/ per KVA.

The writ petitions, out of which the present appeals arise, were filed by the owners of arc/induction furnaces challenging the aforesaid enhancement of the minimum consumption guarantee charges.

The result of the enhancement by the aforesaid Resolution of the D.M.C. was that for demand charges for the first 1000 KVA of billing demand for the month, instead of tariff being Rs. 40 per KVA or part thereof it was enhanced to Rs. 340 per KVA or part thereof.

It is common case that all the writ petitioners had entered into agreements with the D.M.C and clause 15(a) thereof provided as follows:-

> "15(a) The consumer shall pay each month to the Undertaking for electrical energy supplied during the preceding month such amount as shall be calculated and ascertained in accordance
> 135
> with the Rate-Schedule L.I.P. attached hereto. The rates contained in the schedule are those in force at the time of executing this agreement. The consumer shall be eligible for whatever reduction or rebate as may be granted on the rates and shall be liable to pay for whatever surcharge or increase in these rates as may from time to time be levied or made by the Undertaking. Any other method of charging decided by the Undertaking shall also be applicable.'

The rate schedule of the L.I.P. consumers, which was part of the agreement, for the year 1988-89 has already been reproduced above.

Various contentions were urged by the appellants before the High Court. One of the main contentions raised was that the provisions of section 21 of the Indian Electricity Act, 1910 (hereinafter referred to as 'the 1910 Act') apply and the decision to increase minimum charges is contrary to section 21(2) of the said Act.

it was submitted that changing the rates at which minimum charges are to be realised amounts to altering or amending the conditions of supply and this could not be done without the previous sanction of the State Government. Adraittedly the State Government had not, in the present case, granted the approval for the change in the rates and, therefore, the proposed increase was in violation of section 21(2) of the 1910 Act. The High Court rejected this submission and held that in case the local authority was the licensee, no prior approval of the Government for changing the rates is

required in law.

It was next submitted before the High Court that the minimum guarantee charges can only be levied under the proviso to section 22 of the 1910 Act. It was submitted that under the proviso to section 22 the licensee can only charge that amount which will give it a reasonable return on the capital expenditure and cover standing charges incurred by it in order to meet the possible maximum demand. According to the learned counsel the respondents have to satisfy the Court that the minimum demand charges have been raised to Rs. 340 from Rs. 40 and that the additional capital expenditure had been incurred which would justify Rs. 340 being charged as a reasonable return on the said capital expenditure.

The High Court rejected this submission and took the view that apart

136

from proviso to section 22, the agreement between the parties justified the claim of the D.M.C. for minimum consumption guarantee charges.

The next submission of the appellants was that the tariff viz-a-viz a consumer owning arc furnace was violative of Article 14 of the Constitution in as much as the other bulk consumers in the category of LIP consumers have not been so treated. The High Court rejected this contention also and dismissed the writ petitions.

Before us also the arguments have been uged by the various counsel who appeared during the hearing of the batch of the appeals on similar lines.

Before considering the first submission based on the provisions of section 21(2) of the 1910 Act it would be useful to notice the provisions thereof. Section 21(2) reads as follows :-

> "21(2) A licensee may. with the previous sanction of the State Government, given after consulting the State Electricity Board and also the local authority, where the licensee is not the local authority, make conditions not inconsistent with this Act or with his licence or with any rules made under this Act to regulate his relations with persons who are or intend to become consumers, and may, with the like sanction given after the like consultation, add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null and void :
>
> Provided that any such conditions made before that 23rd day of January, 1922 shall, if sanctioned by the State Government on application made by the licensee before such date; as the State Government may, by general or special order, fix in this behalf, be deemed to have been made in accordance with the provisions of this Sub-section."

It will be noticed that this provision is applicable to the licensees other than the local authorities. "Licensee" as defined in the 1910 Act in section 2(h) means 'any person licensed under part II to supply energy'. The D.M.C., which is the licensee in the present case is not a licensee licensed under part 11 to supply energy. D.M.C. is licensee by virtue of the

137

provisions contained in the Delhi Municipal Corporation Act, 1957.

Coming to the second submission urged before the High Court

the provisions of section 22 of the 1910 Act may be noticed :

> "22. Obligation on licensee to supply energy where energy is supplied by a licensee, every person within the area of supply shall, except insofar as is otherwise provided by the terms and conditions of the licence, be entitled, on application, to a supply on the same terms as those on which another person in the same area is entitled in similar circumstances to a corresponding supply :
> Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration."

The reliance before us was placed by the learned counsel for the appellants on the proviso to section 22. It will be noticed that the proviso talks about 'a separate supply unless he has agreed with the licensee to pay him such minimum annual sum'. In the present case there is no question of any separate supply or any agreement in relation to minimum annual sum. Section 22 deals with totally different situation and has nothing to do with the minimum consumption guarantee charges provided as part of the tariff which intern was part of the agreement between the parties.

In the present case, on facts, the challenge is to the tariff. As stated above, the tariff is the two part tariff system. The two part tariff system is comprised of two charges (i) minimum consumption guarantee charges called demand charges and (ii) energy charges for the actual amount of energy consumed. Under this system an LIP consumer pays a minimum guarantee consumption charges at the rate fixed by the D.M.C. If the LIP consumer does not consume the specified minimum quantity of electricity or no energy at all even then he has to pay minimum consumption guaran-

138

tee charges. But in case the consumer consumes more electricity than the minimum, then the consumer pays the electricity charges for the actual consumption of electricity beyond the minimum consumption guarantee charges, in such a manner that minimum consumption guarantee charges are merged in the total bill for electricity consumed. In other words, if a consumer consumes more than the specified minimum quantity of electricity then, in effect, he will pay for electricity which is actually consumed by him. As stated earlier the appellants have obtained licenses for the supply of electricity to a sanctioned load of more than 100 KW and they fall in the category of LIP and the two part tariff is applicable to them. For the period 1985-86 to 1988-89 the respondents had fixed rates of minimum consumption guarantee charges at the rate of Rs. 40 per KVA for 1000 KVA and Rs. 38 per KVA for consumption above 1000 KVA.

We had already noticed the reasons which persuaded the D.E.S.C. to justify & recommend the increase in minimum consumption guarantee charges to the D.M.C. The commercial losses mentioned in the letter of the General Manager were

attributed to pilferage/fraudulent abstraction of energy etc. The minimum consumption guarantee charges being quite low also attributed to the tendency of fraudulent abstraction of energy and it was after giving a serious thought to reduce the pilferage/fraudulent abstraction of energy, the D.M.C. felt desirable to revise the rate of minimum consumption guarantee charges to a reasonable level so that consumers are not tempted to adopt such unfair means and the rates are commensurate with the fixed expenditure being measured by the undertaking. The reasons for the revision of minimum consumption charges, in respect of arc/induction furnaces, were that in many instances it was noticed that meters where bulk supply were made were found to be defective and the consumption recorded was found to be extremely low causing loss of huge revenue. The arc/induction furnaces normally run continuously and, therefore, it was justified to increase the rate of consumption guarantee charges. The variation in the electricity consumed by different consumers indicated that the charge of pilferage of electricity and gross under-utilisation or consumption of electricity compared to the sanctioned load was not without foundation. The respondents had placed on record a tabulated statement of the consumers using induction furnaces before the High Court. If we look at the said chart reproduced in the judgment of the High Court under appeal it deals with 52 consumers including most of the appellants. This statement shows large variation of 139
the electricity consumed, particularly at serial Nos. 2, 13, 15, 26 & 44. If. we look at consumer at serial No. 14 it shows that the unit worked only for 29 hours in the whole month as per the consumption per unit per month. Whereas the unit at serial No. 26, had a sanctioned load of 1573.11 KWS, the approximate number of hours worked by it in a month were 106 i.e. little more than 4 days in month. It is surprising that the units are still surviving by working for a short period. On the assumption that the electricity consumed is as per the sanctioned load the approximate number of hours for which the induction furnaces have been worked in a month has been stated in the said statement. There was thus a reasonable basis to assume theft by substantial number of arc/induction, furnaces consumers It will be noticed that consumer contracts for a minimum supply of electricity of certain dimensions and the D.M.C. which is licensee in the resent case, has to buy energy by way of bulk supply from outside sources and has to keep it readily available for the consumer for the whole year round. Surely the consumer, who contracts for such high quantity of energy, does so, because of its need and not for keeping it as stand by, without paying for it. No licensee can possibly keep such enormous quantity of electricity in reserve for a consumer, month after month, without its consumption. That is why in the tariff, which was part of the agreement, for LIP consumers there was two part tariff system partly minimum consumption guarantee charges and partly for actual energy consumed.
It was also stipulated that the minimum consumption guarantee charges would not be payable if a consumer utilises or consumes 60% of the sanctioned load. The rate per unit had not been changed. It was only the minimum guarantee charges which has been revised. If a consumer consumes more than 60% of the sanctioned load, then he is not adversely affected by the revision of the minimum demand charges from Rs. 40/- per KVA per month to Rs. 340/- per KVA per month. it is difficult to appreciate or understand how the manufacturers using arc/induction furnaces could have

such variation in the consumption of electricity, as indicated in the tabulated statement, except to suggest that there was large scale pilferage of electricity. It is not easy to accept that induction furnaces having sanctioned loads of more than 1000 KW consuming electricity, if converted into approximate number of hours worked in a month at the maximum load, being as little as 18.1 hours especially when there were instances of other induction furnaces consuming far more number of units per month. The respondents had to keep in readiness the supply of energy
140
as per the sanctioned load of various consumers and were incurring expenditure for the generation, supply or purchase of the same. When the consumers were not paying for it, the respondents obviously had no option but to revise the minimum demand charges so as to cover up and make good the generating and supply costs.

Apart from that the fixation of tariff is a legislative function and the only challenge to the fixation of such levy can be on the ground of unreasonableness or arbitrariness and not on demonstrative grounds in the sense that the reasons for the levy of charge must be disclosed in the order imposing the levy or disclosed to the court, so long as it is based on objective criteria.

In the present case the respondents themselves have placed figures to demonstrate the formula on the basis of which the rate of Rs. 340 per KVA has been fixed. The formula shows that if 60% of the load sanctioned is utilised then there is no unreasonableness or excessiveness in the tariff. It was explained that if the furnaces in question work for 24 hours a day for 25 days in a month at a load factor of 60% the consumption against 1 KW would be equal to 1 x 24 x 25 x .60 = 360 units. Over all energy consumption rate (demand charges proportionate to one unit + per unit energy rate) is Rs. 1.10 per unit. The total amount per KW per month 360 x 1.10 = Rs. 396. Again the consumption per KVA at the rate of 0.85 (power factor) would come to 306 units and a total amount per KVA per month at the rate of Rs. 1.10 per unit would come to Rs. 336.60 ps. i.e. rounded to Rs. 340 for the purpose of minimum consumption guarantee charges.

We are thus satisfied that the recommendations of the D.E.S.C. were justified on facts and were rightly accepted by the D.M.C. in raising the minimum consumption guarantee charges to Rs. 340 per KVA per month for the first 1000 KVA which are neither unreasonable nor arbitrary.

Coming to the plea of discrimination it will be noticed that as bulk consumers belonging to LIP category the consumers of arc/induction furnaces are of a class by themselves and in any case the revision is as per the agreement between the licensee and the consumers which is neither unreasonable nor arbitrary and thus the plea of discrimination has no merit.

The tariff was fixed by D.E.S.C. with the approval of the D.M.C. in
141
view of the power conferred under section 283 of the Corporation Act. Again in view the proviso to Section 277 of the Corporation Act no arguments were addressed on various clauses of the Schedule to the Indian Electricity Act, 1910.

There is thus no merit in these appeals and the same are accordingly dismissed with costs.

N.P.V. Appeals dismissed.
142